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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

Number 1199

HUEY P. MEAUX AND CHARLIE BOOTH,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH JUDICIAL CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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Petitioners Huey P. Meaux and Charlie Booth pray that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above-styled case on January 4, 1968, and its denial of Petitioners' motion for rehearing on February 7, 1968.

CITATIONS OF OPINIONS BELOW

The opinion of the Court of Appeals printed in Appendix A hereto, page 8 as yet unreported, affirms the convictions and judgments contained in the indictment.

JURISDICTION

Judgment of the Court of Appeals was entered on January 4, 1968, page 8 infra. Timely petition for re-hearing

was filed on January 12, 1968, and denied on February 7, 1968. Jurisdiction of this Court is invoked under Title 28 U. S. C. A. Section 1254 (1).

QUESTIONS PRESENTED

In a prosecution for an alleged violation of Title 18 Section 371, U. S. Code involving the alleged interstate transportation of a woman in violation of the Mann Act for purposes of prostitution (Title 18, Section 2421 - 2424 U. S. C. A.), the following questions are raised as a result of said trial.

I.

(a) Whether the argument of the United States attorney was highly inflammatory and constituted reversible error.

(b) Whether Petitioners were denied effective assistance of trial counsel.

STATUTES INVOLVED

Statutes involved in this case include Title 18, Section 371, United States Code Annotated, and Title 18, Sections 2421 - 2424, U. S. C. A. (Cited as Appendix B attached hereto).

STATEMENT

The Petitioners were tried and convicted in the United States District Court for the Southern District of Texas, on an indictment charging them with conspiring to violate the provisions of the Mann Act. (Section 2421, Title 18, U. S. C. A. — Section 371, Title 18 U. S. C. A.).

The case was tried before a jury resulting in the conviction on the conspiracy charge.

Petitioners contended no commercial prostitution was involved, nor was any immoral purpose contemplated, nor did it occur. The United States attorney presented evidence from the accomplices who testified that such actions did occur and had been planned.

The jury evidently believed this testimony and voted the conviction in spite of conflicting testimony and a serious challenge to the credibility of the prosecution witnesses.

REASONS FOR GRANTING WRIT

The practice (ever increasing) by the prosecution of attempting to convince the federal trial juries that they are part of the prosecution; that they have a duty to enforce the laws rather than to decide the facts; further, by implication, charging that acquittal would mean condoning this type of alleged crime. (R 790-791, L 1 to 3)

The Petitioners wanted experienced counsel, Mr. William Scott, to try their case assisted by Mr. Much, who later represented them. (R 3, L 13-23).

Counsel for petitioners indicated that at the time the trial commenced, he was not as familiar with the facts as was his proposed co-counsel (R 3, L 13-23).

The United States Attorney did not oppose the motion for experienced counsel to participate in the defense of the cause.

Petitioners were denied Mr. Scott's assistance and the case was tried with Mr. Much as their lone attorney. The trial court did not ask or request an opinion from the Petitioners as to whether he still desired counsel in addition to Mr. Much.

The totality of the harm from inexperience can best and only be appreciated when the record as a whole is examined.

Trial Counsel had considerable trouble with his interroation, objections, and evidentiary tenders. To say he exhibited a marked unfamiliarity with these basic trial fundamentals would be a conservative appraisal.

Both the remarks of trial counsel for the government during argument and the successful introduction into evidence of considerable objectionable and highly inflammatory matters, effectively denied petitioners any chance at a fair and impartial trial. Defense Counsel neither successfully objected or made any tactical effort to protect the petitioners rights in this regards.

In *Gray* v. *United States* (1962) 112 U. S. App. D. C. 86, 299 F. 2d 467 it was recognized that a charge of ineffective assistance of counsel should not be sustained unless it clearly appears well grounded. This is a case wherein the test of being well grounded has been clearly met.

Counsel himself advised the court on numerous occasions that he was unfamiliar with the court's procedures and the Rules of Criminal Procedure. (R 403, L 27; R 408, L 5-8), (R 32, L 21-25) (R 33, R 34-35), (R 50, 51). The record as cited above reflects numerous examples of such trial inadequacy, that extended argument thereon is unnecessary.

The failure to stop extraneous evidentiary tenders concerning barbiturates; attempted rape; oral sodomy; an after the conspiracy trip; and non-responsive answers injecting possession of a firearm illegally, effectively denied petitioners due process.

The trial court, evidencing some impatience with counsel's obvious lack of experience at page 614, Lines 2 to 17, questioned counsel's ability to explain to the court what he was trying to say and do.

Defense counsel himself acknowledged his inability to express himself and to intelligently utilize defensive objections to objectionable evidentiary tenders.

This was a case, wherein the trial court, having denied petitioners the right to assistance of experienced trial counsel, allowed the trial to continue without petitioners having benefit of adequate defense counsel.

It has been held that lack of effective trial representation by counsel means representation so lacking in competence that it becomes the duty of the court or the prosecution to observe and correct it.

The court recognized evidence of counsel's ineptness, but did not correct it. The United States Attorney recognized this lack of effective defense counsel and took full tactical advantage of it.

The Fifth Circuit, in *Collingsworth* v. *Mayo*, 5 Cir., 173 F. 2d 695, pointed out that the assistance of counsel included consultation and understanding of the accuseds case before trial, a consideration of his special interest in cross-examination of witnesses, and production of defensive evidence; further, it includes the making of the argument and the proper objections.

Taking the record herein, in its full context, the performance of defense trial counsel falls far short of being effective.

The practice of law is an art, as well as a science; the mere presence of an attorney can do not more than raise a presumption of adequate representation. A look at the record by a dispassionate court, in this case, will quickly reflect that defense counsel, however vocal, was not and did not adequately represent the interests of these petitioners.

Errorless counsel simply don't exist as a matter of reality; however, the court is confronted here with a situation wherein there "was a total failure to present the cause of the accused in any competent fundamental respect." *United States* v. *Garguilo,* 325 F. 2d 796; *Brubaker* v. *Dickson,* 310 F 2d 310, (9th Cir., 1962), Cer. den. 372 U.S. 798, 83 S. Ct. 1110, 10 L. Ed. 2d 143.

CONCLUSION

The importance of effective counsel in the basic protection of the individual strikes at the heart of the American jurisprudence system. The need for a clear determination of the basic requirements of competency to insure due process and a fair administration of justice.

The recognition of the permissive bounds allowed the prosecution in catagorizing the jury's responsibility affects every defendant in future trials. To condone or sanction the prosecution placing the jury in a position of law enforcement rather than that of objective fact finding that our jury system requires, does violence to the system.

Respectfully submitted,

EDDINGTON, KROLL, FRILOUX & SMITH

By .....

C. ANTHONY FRILOUX, JR.

Counsel for Petitioners

2012 South Coast Building
Houston, Texas 77002

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petition for Writ of Certiorari was mailed to Morton Susman, United States Attorney, Federal Building, Houston, Texas, and to the Solicitor General, Department of Justice, Washington 25, D. C., postage prepaid, on this the ..... day of ....., 1968.

.....

C. Anthony Friloux, Jr.

APPENDIX "A"

IN THE

Supreme Court of the United States

FOR THE FIFTH CIRCUIT

No. 24459

HUEY P. MEAUX AND CHARLIE BOOTH,
Appellants,

versus

UNITED STATES OF AMERICA,
Appellee.

Appeals from the United States District Court for the Southern District of Texas.

(January 4, 1968.)

Before TUTTLE and GEWIN, Circuit Judges, and HUNTER, District Judge.

PER CURIAM: The appellants, Huey Meaux and Charlie Booth, were charged with conspiracy to transport a fifteen and one-half year old female in interstate commerce for the purposes of prostitution in violation of the Mann Act, Title 18 U.S.C. § 371, Title 18 U.S.C. § 2421. The case was tried before a jury and a verdict of guilty was

returned. In their briefs and oral argument before this Court the appellants raise two contentions: (1) the argument of the prosecutor was highly inflammatory and improper, and (2) appellants were denied the effective assistance of trial counsel. After an examination of the record and the pertinent authorities we have concluded that there is no merit in these contentions. *Root* v. *Cunningham,* 344 F.2d 1 (4 Cir. 1965); *Thompson* v. *United States,* 272 F.2d 919 (5 Cir. 1960); *Thomas* v. *Cassidy,* 249 F.2d 91 (4 Cir. 1957); *United States ex rel Darcy* v. *Hand,* 203 F.2d 407 (3 Cir. 1953); *United States ex rel Hanby* v. *Ragen,* 178 F.2d 379 (7 Cir. 1949); *United States ex rel Weber* v. *Ragen,* 176 F.2d 579 (7 Cir. 1949).

Supplemental briefs filed after oral argument call our attention to parts of the record which reflect statements by counsel and certain evidentiary facts revealed during the trial. We find nothing in these supplemental briefs which causes us to change our conclusion that the judgment should be affirmed.

The judgment is AFFIRMED.

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UNITED STATES OF AMERICA

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BRIEF FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,

FRED M. VINSON, JR.,
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OPINION BELOW

The opinion of the court of appeals is reported at 387 F.2d 370 (Pet. App. A).

JURISDICTION

The judgment of the court of appeals was entered on January 4, 1968. A petition for rehearing was denied on February 7, 1968. The petition for a writ of certiorari was filed on March 4, 1968. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the closing argument of government counsel deprived petitioners of a fair trial.

2. Whether petitioners were denied the effective assistance of counsel.

STATEMENT

After a trial by jury in the United States District Court for the Southern District of Texas petitioners Booth and Meaux [1] were convicted of conspiring to violate the Mann Act (18 U.S.C. 2421). On January 27, 1967, each was sentenced to three years' imprisonment. The court of appeals affirmed (Pet. App. A).

The government's case was developed primarily through the testimony of Lynda Puckett. She had met co-defendant Bergen in the latter part of August 1965 when she was fifteen, and through him was introduced to petitioners. In mid-September, Bergen and petitioners discussed with Miss Puckett the possibility of her accompanying them to a country music convention in Nashville, Tennessee. Although she was to be referred to as a "promotional assistant," [2] she was advised that her primary function would be to have sexual relations with business contacts of petitioners. (R. 18-24, 27.) Miss Puckett was to receive

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[1] Petitioners were indicted together with Thomas Bergen and one Garris. Bergen pleaded guilty prior to trial (R. 10-12) and Garris' case was severed (R. 7).

[2] A contract was drawn up setting forth that Miss Puckett was to be a singer, in case any law enforcement officers should happen to question her presence with the men (R. 29).

approximately $100 per night (a portion of which would go to Bergen) payable in a lump sum at the termination of the convention (R. 27, 29, 39).[3]

In mid-October, Miss Puckett, Bergen and Booth drove from Texas to Nashville, Tennessee[4] (R. 30-31). En route Booth unsuccessfully tried to rape her in the rear seat of the car (R. 33-37). On their arrival, they checked in at the Capitol Park Motel where rooms had already been reserved for them (R. 24, 39). While at the convention, Miss Puckett was directed by Meaux and co-defendant Garris to have sexual relations with several men; she thereafter engaged in sexual intercourse with a man named Regan and several other persons (R. 40-50, 52, 212-213). At the conclusion of the convention, she was given $100 for her services by petitioner Meaux (R. 54).

Bergen corroborated Miss Puckett's version of the events in all pertinent details (R. 541-579). The manager of the Capitol Park Motel testified that petitioners, Garris, Bergen, Miss Puckett, as well as those with whom it was alleged Miss Puckett had relations, had resided at the motel on the relevant dates (R. 229-234).

Each petitioner denied having any carnal knowledge of Miss Puckett or having arranged for her to

---

[3] Before departing on the trip Miss Puckett purchased under the name "Mrs. Bergen" a large quantity of birth control pills (R. 54-55). The woman who sold her the pills corroborated this testimony (R. 222-224).

[4] Although there had been some previous discussion about Miss Puckett walking across the state lines, in order to avoid prosecution under the Mann Act, she was in fact driven across the lines (R. 38).

have sexual relations with any of his acquainances at the convention (R. 291, 299-300, 304-305, 336-337, 466-467, 478-481, 485). They testified that Bergen had brought Miss Puckett to Nashville because she was his girl friend, not because of any illicit scheme (R. 289-290, 294-295, 469-470). Mr. Regan testified for the defense that he had not had sexual relations with Miss Puckett (R. 364, 366).

ARGUMENT

1. In the course of his closing argument, government counsel made the following remarks—the italicized portion of which petitioners complained of in the court below:

> May it please the Court, Mr. Much, *Gentlemen of the Jury, it is my duty now as your public servant to close the argument for the United States of America.*
>
> *I welcome this duty because I enjoy my job, working for you people.* [R. 790-791.]
>
> * * * *
>
> That's all I have got to say. You have heard these people testify and you have seen the cross-examination, and you determine who you want to believe. It's not up to me and it's not what I say. *I am just your public servant and it is not up to the F.B.I. to determine it. It's up to you, and whether or not you enforce the law depends upon your verdict in this case. You could turn these men loose and if you do I guarantee you it will continue,* their activities like this and what others we have heard about, *but I assure you, if your verdict is guilty,* and I say that the evidence

> is sufficient to uphold this verdict, *you might be surprised at the good it will do right here in this community.* It will be heard in this courtroom by people that it will have an impact upon, and it will be in newspapers, and there will be people who read about it and if we can do some good in this realm, and especially in the teen-age realm, we have done something to be proud of.
>
> That's all I'm asking you to do, to uphold the law as your conscience dictates. [R. 799-800.]

These remarks—to which no objection was made—followed an extensive summary of the government's evidence and were made in an effort to counter defense counsel's attack on the credibility of the government's chief witnesses and his attempt to impugn the motives of the government in calling the witnesses, and its honesty in dealing with the witnesses and the jury. In these circumstances, the closing argument of the government was within permissible bounds.

2. At the opening of the trial, petitioner's retained counsel, Mr. Much, requested the court to permit his co-counsel, Mr. Scott, to practice before the court *pro hac vice*. The court, after being informed that Mr. Scott had resigned from practice before the district court several years earlier—apparently under a cloud—and after consulting with the judge before whom the resignation occurred, denied counsel's request (R. 4-7). In the circumstances, there was no abuse of the trial judge's discretion in not admitting Mr. Scott to participate.

The record does not support petitioners' attack on the adequacy of defense counsel. Mr. Much interposed numerous objections which were sustained (see, *e.g.*,

R. 133, 144, 167, 176, 181, 204, 380-386), thereby evidencing an adequate understanding of the rules of evidence. He cross-examined the government's witnesses exhaustively (R. 57-205, 215-218, 584-688). In an effort to rebut the government's case, defense counsel placed petitioners, as well as other witnesses, on the stand. In his closing argument to the jury, counsel sought to cast doubt on the reliability and sufficiency of the government's evidence. That other counsel, on combing the record, finds basis for some objections to testimony,[5] or might have employed a different strategy in defending petitioners, is not determinative. See *Johnson* v. *United States*, 362 F.2d 43, 47 (C.A. 8).

[5] Petitioner's assertion that counsel was remiss in not entering an objection to several specified matters is without merit. The admission of evidence relating to the attempted rape of Miss Puckett and her commission of oral sodomy was proper, since petitioner had been charged with transporting the victim for prostitution "and other immoral purposes." The reference to petitioners' taking pills was a neutral one. Any adverse implication was dispelled through testimony that the pills were either vitamins or appetite appeasers (R. 303, 399-401). Although testimony concerning a gun was not objected to, direct examination of Booth elicited the testimony that the gun was a toy pistol left in the car by Booth's nephew (R. 300-301).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

FRED M. VINSON, JR.,
Assistant Attorney General.

BEATRICE ROSENBERG,
J. THOMAS CARROLL, JR.,
Attorneys.

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PETITION FOR A REHEARING

Petitioners Huey P. Meaux and Charlie Booth pray that the Court grant a rehearing on their Petitions For A Writ Of Certiorari to issue on the ruling of the United States Court of Appeals for the Fifth Circuit entered on January 4, 1968, and for the denial for rehearing thereon issued on February 7, 1968.

JURISDICTION

This Court has jurisdiction under Title 28, U.S.C.A., Section 1254(1) to review decision of the United States Court of Appeals for the Fifth Circuit; and jurisdiction for considering this petition for rehearing is authorized under Rule 58, Supreme Court Rules, Title 28, U.S.C.A.

GROUNDS FOR REHEARING

The denial of the Application for Writ of Certiorari was in error; the two basic questions presented to the Court in the application for the writ raised two substantial questions:

1. The denial of the assistance of effective trial counsel during a criminal trial.
2. The prejudicial effect of the inflammatory remarks of the United States Attorney.

REASONS FOR GRANTING REHEARING

The questions presented pose two of the most serious facing citizens confronted by the sovereign seeking to convict the citizen for an alleged violation of the numerous Federal Statutes.

Failure to specifically ask Petitioners if they were willing to allow assistant trial counsel to proceed, after denying Petitioners' rights to experienced trial counsel effectively denied Petitioners a fair trial.

A review of the short transcript will only too clearly reflect the result. The trial was, from Petitioners' standpoint, merely a procedural preliminary preparatory to being found guilty, any defense or attempt at defense was found totally wanting.

A trial with inexperienced trial counsel is and in this case *was* no trial at all when considered in the light of reality.

The growing abuse of the latitude allowed the representative of the sovereign in arguing his case, cannot be minimized. The Court should consider and lay down a clear

limitation on the scope of permissive argument by the United States Attorney.

CONCLUSION

The Court should grant a rehearing on the Petition for Writ of Certiorari; then should grant the Writ as requested. Both questions presented, particularly the question of the assistance of effective trial counsel, is of grave importance to every citizen. Due process and fair administration of justice require reconsideration on these matters.

Petitioners respectfully request that the Court grant this rehearing request.

Respectfully submitted,

EDDINGTON, KROLL, FRILOUX & SMITH

By .....
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2012 South Coast Building
Houston, Texas 77002
CA 7-4288

CERTIFICATE OF COUNSEL

I certify that the Petition for Rehearing is submitted in good faith; that it poses substantial questions, and is not submitted for the purpose of delay.

EDDINGTON, KROLL, FRILOUX & SMITH

By .....
C. Anthony Friloux, Jr.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petition for Writ of Certiorari was mailed to Morton Susman, United States Attorney, Federal Building, Houston, Texas, and to the Solicitor General, Department of Justice, Washington 25, D. C., postage prepaid, on this the ..... day of ....., 1968.

EDDINGTON, KROLL, FRILOUX & SMITH

By .....
C. Anthony Friloux, Jr.